

REQUEST FOR PROPOSALS

Park View Site Development Opportunity

Open Call for Development Proposals for Publicly-Owned 1.38-Acre Site in
Downtown Niagara Falls, NY.



**Empire State
Development**

Issued: March 14, 2023

Pre-Proposal Meeting: April 11, 2023 at 10 a.m. ET

Proposals Due: May 15, 2023 at 3 p.m. ET

Respondents must request a dedicated Dropbox for submitting a digital version of their proposal and any inquires to ParkviewRFP@esd.ny.gov by May 1, 2023 at 3 p.m. ET

Primary Contact:

John Discolo,
Senior Director, Procurement, Insurance & Risk
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I. INTRODUCTION

USA Niagara Development Corporation, (“USA Niagara”), a subsidiary of the New York State Urban Development Corporation d/b/a Empire State Development (“ESD”), a public benefit corporation of the State of New York, is issuing this request for proposals (“RFP”) for the redevelopment of a multi-lot property located at 535-579 2nd St, 578-582 3rd and 213 Walnut St. (“the Property”) or (“the Site”) in downtown Niagara Falls, New York. The redevelopment of the Property — a block from Niagara Falls State Park and the Niagara River Gorge — represents a unique opportunity to capitalize upon the continued revitalization of an iconic destination.

USA Niagara acquired this Property in March 2019 through USA Niagara’s strategic land acquisition program. The program was created to assemble long-dormant properties located near Niagara Falls State Park to remove blight from the downtown area and expand the density of uses as downtown Niagara Falls grows into a year-round, sustainable neighborhood. Acquisition of these key parcels is intended to support significant new mixed-use development.

Niagara Falls continues to be one of the world’s most recognizable destinations. With over 9 million annual visitors on the U.S. side alone, the city is part of major magnet for domestic and international tourism. Notably, it is also positioned as the geographic center of a bi-national “Golden Horseshoe” extending from the Greater Toronto Area through Western New York to the Finger Lakes, possessing a regional population of over 14 million people. Niagara Falls is within a day’s drive of all Northeast and Midwestern U.S. States and the Southern Canadian Provinces of Ontario and Quebec. The aggregate population of this market area exceeds 100 million. With recent generational investments into infrastructure, transportation and tourism development, the city is poised to see significant economic growth in the coming years.

II. DOWNTOWN NIAGARA FALLS

Downtown Niagara Falls sits in close proximity to several of the largest employers in Niagara County, including the Niagara Falls Memorial Medical Center campus (over 1,100 employees), the Seneca Niagara Casino Complex (approximately 2,000 employees), the Niagara Falls Culinary Institute (potential growth to 1,000 students/faculty), Niagara University (3,500 students/faculty) and the Niagara Falls Air Reserve Station (2,600 employees). In the past decade, downtown has also seen a growing concentration of hotels, restaurants, and attractions.

The residential market in and around downtown is expanding. Despite the concentration of employment in the neighborhood, there is a shortage of housing. Quality apartments downtown find tenants quickly and unmet demand remains at all income levels. At least a hundred apartments are currently under development, and more than seventy-five more have been completed in the last five years.

Although the inventory of available hotel rooms in Niagara Falls expanded through 2020, occupancy rates and average daily rate remained steady, likely due to an increase in visitation and tourism spend. While downtown Niagara Falls has seen an influx of upscale and mid-scale hotels over the course of the last decade, there is still room for growth at the upper-upscale level, as well as in the suites-style category.

Aside from expanding housing and hospitality options in downtown Niagara Falls, the advancement of retail and commercial activity is vital to USA Niagara's development strategy. Redevelopment of vacant and underutilized properties for neighborhood retail will allow for street activity historically seen in this neighborhood pre-urban renewal. Significant potential for growth in the restaurant and live entertainment space exists downtown, even allowing for the seasonality of visitation. Past assessments suggested opportunity for roughly \$25 million in food/beverage sales in the downtown market annually and visitation has grown since then.



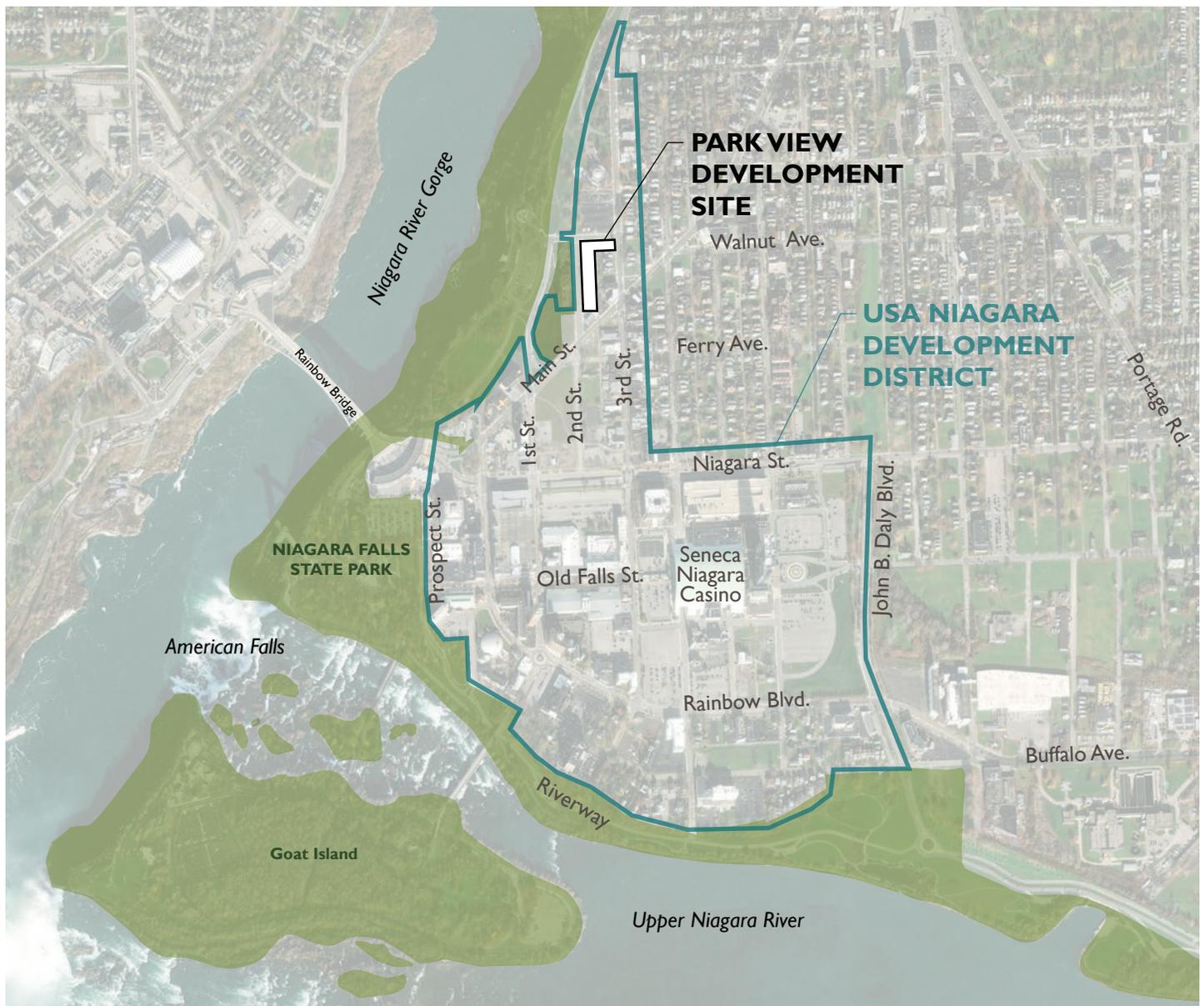
Aerial View of Downtown Niagara Falls, Goat Island and the Falls from Canada

III. USA NIAGARA DEVELOPMENT CORPORATION

USA Niagara supports and promotes economic development initiatives in Niagara Falls by leveraging private investment and encouraging growth and renewal of the tourism industry in the City of Niagara Falls. Niagara Falls is one of New York's greatest assets and one of the most beautiful natural resources in the world, attracting millions of visitors to New York State to behold the beauty, power and majesty of this natural marvel.

Through USA Niagara, ESD has kicked off a revival in Niagara Falls, NY. USA Niagara was established in 2001 to focus on the revitalization of downtown Niagara Falls after decades of decline. The agency works directly with state and local elected officials, civic groups, community leaders and other state agencies on a variety of urban and economic development initiatives. USA Niagara supports a variety of projects in Niagara Falls that create jobs, encourage businesses investment, improve regional infrastructure and promote tourism activity. After a robust strategic planning process, the Site was chosen as one of USA Niagara's primary redevelopment targets, as the agency evaluates interim and long term uses for the balance of its real estate portfolio.

In addition to working collaboratively with other state agencies on the removal of the former Robert Moses Parkway and spearheading the re-establishment of Old Falls Street, USA Niagara has been directly involved in the development of the Niagara Falls Culinary Institute as part of the ongoing reuse of the former Rainbow Centre Mall, the development and ownership of the Niagara Falls Convention Center, and over \$200 million worth of investment into new lodging and residential products. USA Niagara's efforts are integral to setting Niagara Falls on a path to prosperity.



USA Niagara Development District in Downtown Niagara Falls

IV. SITE CONTEXT & ADVANTAGES

A Key Location

The Site sits at the northern edge of downtown Niagara Falls, near the entrance to the Niagara Falls State Park Gorgeview section, and its development has the potential to capitalize on the Park's millions of annual visitors. In turn, it is located two blocks from the Rainbow Bridge Plaza connecting Niagara Falls, NY to our Canadian sister city of Niagara Falls, Ontario and the rapidly growing Southern Ontario region (over 10 million people).

Clear Title & Ownership Fee

Title/ownership of the Site rest with USA Niagara and is not impeded by any unusual constraints.

A Well Developed Transportation Infrastructure

The Site is located on major urban thoroughfares and along intra-city transit routes, as well as express routes to two major airports, Niagara Falls International Airport (IAG) and Buffalo-Niagara International Airport (BUF), that together serve a full range of regular direct service by all major and low-cost carriers and charter companies, as well as facilities at IAG for wide-body aircraft. In addition, the Site has easy access to a regional mass transit system that includes intra-city bus service, tourist-oriented trolley service, access to intercity coach carrier and international passenger rail.

Renowned Outdoor Recreation Opportunities

It is within short walking distance of a variety of scenic recreational amenities (e.g., Maid of the Mist, Upper Rapids, Goat Island, Upper and Lower River Multi-Use Trails, Aquarium of Niagara, etc.). The City of Niagara Falls recently implemented a successful bike share program, and has recently invested in its bike facilities to more efficiently connect the numerous State Parks along the Niagara Gorge, including Whirlpool, Devil's Hole, ArtPark and Fort Niagara.

Knowledge and Power

The Site also benefits from its proximity to one of the world's largest hydroelectric power production facilities at the New York Power Authority's Niagara Power Project; and a number of colleges and universities, including Niagara University, the University of Buffalo, Niagara County Community College, the Niagara Falls Culinary Institute, Buffalo State College, Canisius College and Erie Community College, among others.

Within USA Niagara "Development District"

The Site is within the USA Niagara Downtown Development District, and thus it benefits from various USA Niagara investments and activities over the last decade. It also makes it potentially eligible for site-specific development assistance—although any public investments will largely be a function of the scale, proven project need and economic impact of a proposal. In collaboration with USA Niagara, the ESD Regional Office has also committed \$40 million to revitalize other commercial corridors and community anchors in the city.

Moreover, the Site would build upon and gain from several existing features and projects downtown, including the following:

Niagara Falls State Park

Designed by renowned landscape architect Frederick Law Olmsted and on the National Register of Historic Places, Niagara Falls State Park has undergone \$92 million in recent rehabilitation projects including upgrades of the park's observation tower, addition of new multi-purpose trails, and restoration of natural areas. This work continues to position the park as the defining feature of the City and its greatest resource. The recently completed removal of three miles of the former Robert Moses Parkway resulted in the largest expansion of the park since 1885. These new sections of park, the Riverway to the south and Gorgeview to the north, have reconnected the city to its waterfront, and are among the premier urban nature trails in the country. During the 2019 tourism season, the park had a fantastic year, with an estimated 8.86 million visitors.

Seneca Niagara Casino Complex

Opened on New Year's Eve 2002 in a Phillip Johnson-designed structure, this full-range facility is a few blocks from the Project Site. With 150,000-SF of premium gaming and entertainment facilities, it attracts millions of patrons a year. In 2005, the complex's Four-diamond, Luxury Spa Hotel was opened, containing 600 rooms and day-spa facilities. While Casino patrons present obvious prospects for additional hospitality and entertainment facilities downtown, opportunities of the complex's employment base should not be overlooked. With a staff of 1,500, it is the largest employer in the City and one of the largest employers in Niagara County.

The Niagara Falls Convention Center

Completed in 2004, this 115,000-square-foot facility replaced the meeting functions of the former Niagara Falls Convention and Civic Center. The facility — located on Old Falls Street — contains exhibit/concert hall facilities; ballroom and pre-function space; and state-of-the-art meeting space. It regularly hosts more than 250 annual events and over 65,000 persons. In 2022 the facility reached \$3 million in revenue, for the second straight non-pandemic year.

Rainbow Centre Mall Renovation

After shuttering its doors in 2000, the former Rainbow Centre Mall sat completely vacant until the Niagara Falls Culinary Institute, operated by Niagara County Community College, opened in 2010. With world class kitchens, a fine dining restaurant, café and bookstore, the facility occupies 90,000 square feet. USA Niagara is currently spearheading the redesign and reuse of the remaining space in the former mall concourse. Marvel is leading the design effort, which will ultimately turn the building "inside out", reconnecting it with the street grid and creating new facades and uses that generate activity and vibrancy for downtown. This project will also renovate and overhaul the existing attached parking ramp with state of the art revenue collection, providing ample parking to service future development on the Site.

V. PROJECT SITE



Project Site Location in Downtown Niagara Falls



Project Site and Surroundings

Site Specifications

Acres 1.38

Zoning Zone: Gorge View Transition (D2-B)
Districts: Design District, Urban Renewal Area

Maximum Height 80'

Parking Minimum Hotel Use Only - 0.5 per rentable room

Street Frontage 2nd Street: 490'
Walnut Street: 285'
3rd Street: 66'
See Appendix A for a complete site survey

Appraised Value \$970,000 (2017)

Walking Times To Niagara Falls State Park: 0 min.
To Old Falls Street: 9 min.
To 3rd Street Business District: 3 min.
To Transit Stop: 3 min. (3 routes)
To Bike Share Dock: 3 min.

Utilities The Site is currently served and has direct connection access by all major utilities and infrastructure facilities, including water, sewer, electric, and telecommunications.

Other Highlights Adjacent to new State Park land - 15 minutes walk to Niagara Falls through the park
Walking distance to local restaurants and other downtown businesses
View of Niagara Gorge rim, Canadian Skyline and mist from the Falls
Easy access to Niagara Gorge hiking trails and Shoreline trail with connections to regional cycling network
1.3 miles from Amtrak station
0.5 miles from Bridge to Canada
Across from State Park Police and Aquarium of Niagara
Access via public alley along eastern side of the site

Notes A public alley runs through the site between 2nd and Third Street from Walnut to Main, which must be preserved.

The Project Site has no known environmental constraints, nor has exhibited past land uses that would suggest contamination. The site sits adjacent to a gas station, but signs of petroleum contamination are not apparent on the site. A Phase II site assessment with these findings is included in the Appendix B.

VI. DEVELOPMENT REQUIREMENTS

This RFP envisions redevelopment of the Site with a medium-density mix of uses and ground level activity that will contribute to visitor and resident offerings downtown. The particular mix of uses and proportions attributed to each are being left solely to the knowledge and creativity of prospective proposers.

The redevelopment must be built in accordance with development regulations specified in the Niagara Falls Zoning Ordinance, and be designed in a manner that is consistent with the USA Niagara Urban Design Guidelines.

Development-Specific Requirements

Proposed developments must:

- Contribute to a fine grained, walkable urban fabric;
- Promote to a lively, urbane setting and a substantial increase in street-level interaction;
- Have uses that compliment activities in Niagara Falls State Park including the Schoellkopf Power Plant Historical Site, Gorge Discovery Center and the Aquarium of Niagara;
- Expand the availability of goods, services, entertainment and educational venues available to visitors and residents;
- Create new jobs, increased tax base, and further investment in Niagara Falls;
- Stabilize and preservation of the Site value; and
- A be a mutually beneficial public/private partnership with the goal of returning the Site to a productive and self-sustaining use.

Zoning Requirements

The Site is classified under the Niagara Falls Zoning Ordinance (amended in 2021) as D2-B Gorge View Transition.

The purpose of this district is to provide a buffer zone for the unique development of the Gorge View district. The sub district will provide for the commercial, residential, and mixed-use types of buildings which currently exist within the perimeter of the Gorge View District. Development is intended to create a scalable transition from the surrounding districts. D2-B has an allowable base building height of 80 feet and a maximum allowable front yard setback of 10 feet.

The full set of zoning requirements applicable to the Project Site may be downloaded from the City's website using the following link:

https://niagarafallsusa.org/download/Planning/2021_documents/zoning_ordinance/Niagara-Falls-Zoning-Ordinance_102521.pdf

Design Requirements

Development proposals should comply with USA Niagara Urban Design Guidelines, which apply to all projects with USA Niagara involvement. They expand the more general standards in the City of Niagara Falls Zoning Ordinance and provide more detail regarding desired activities and visual attributes of proposed buildings in downtown Niagara Falls. Whereas these guidelines are not specific regulations, their purpose is to give strong direction and help provide for an expeditious review/response to proposed development proposals.

Overall, the guidelines are intended to foster an urbane, traditional city setting that is evidenced in building uses and orientation, materials/finishes, scale, and other design features. These involve, but are not limited to, the following:

- Incorporation of design elements that give a strong visual demarcation of the “base”, “middle”, and “top” of new buildings.
- Incorporation of street level uses that promotes and contributes to pedestrian activity and street life (e.g., retail, cultural, food and beverage, and/or entertainment) and/or with activities that “spill over” into the sidewalk area.
- Use of traditional and natural building materials (brick, stone, steel, and wood) and natural finish systems, particularly on the ground-story level of a building

The full set of USA Niagara Design Guidelines may be downloaded from the USA Niagara website using the following link:

https://esd.ny.gov/sites/default/files/USAN_Urban_Design_Standards.pdf

VII. SUBMISSION REQUIREMENTS

The following are the requirements for all proposal submissions. USA Niagara reserves the right, in its sole discretion, to reject any Proposal that is deemed incomplete or unresponsive to the RFP requirements. USA Niagara also reserves the right, in its sole discretion, to reject any and all proposals for any reason or for no reason, and to proceed (or not proceed) with the development of the Site (either by itself or in conjunction with one or more third-party) without completing this RFP process.

In evaluating the capabilities of the Respondent, USA Niagara may use any and all information available (including information not provided by the Respondent). Proposals should clearly and concisely state the unique capabilities, experience, and advantages of the Respondent, and demonstrate the Respondent's capability to satisfy the requirements and objectives set forth in this RFP. USA Niagara further reserves the right to ask additional written or oral clarifying questions to all Respondents or to a subset of Respondents. The initial Proposals should be no longer than 100 pages of text.

Each complete proposal must contain the following elements:

Executive Summary

- A summary of the Respondent team;
- A summary of your organization's or team's ability to undertake the project;
- A short description of the proposed development including gross square footage and proposed uses;
- A description of the proposed ownership/management structure for the Project;
- Estimated construction budget;
- Proposed financial offer; and
- Proposed time to complete the project (in months).

Development Plan

The submission should include a detailed narrative describing all relevant aspects of the Respondents proposal and any plans/timing of phasing of the development. The description should include (at a minimum):

- A description of the proposed uses, a list of potential tenants and any letters of interest and/or intent from potential tenants.
- A summary of the proposed building program for the Project with square footages for each use.
- A description of how the Project will meet the requirements set forth in this RFP.
- A description of any sustainable or resilient building practices that will be incorporated into the project during construction and operation of the Project.

Project Design

The Respondent's submission must also provide the following:

- At a minimum, a set of drawings on 11" x 17" paper, showing the proposed Project and a set of concept, ground-level renderings of the proposed Project showing the principal elevations and massing, floor plans for each use, streetscape and landscape plans, entry feature and signage.
- A description of the proposed exterior materials and other relevant specifications.
- A description of the proposed project's adherence (or not) to the USA Niagara Design Guidelines.

Development Schedule

Respondent must submit a development schedule (subdivided into phases, if necessary), identifying the estimated length of time to reach key milestones, including: commencement and completion of design; financing; commencement and completion of construction; potential tenants; and operational stabilization for each component of the development program. Any contingencies that may affect this timeline should be identified.

Financial Offer Terms

Respondents are encouraged to submit offers to purchase the Site, expressed in a fixed dollar amount, which may be nominal, to be paid at closing. Under this scenario, transfer of title will be by quit-claim deed (without any representations or warranties) at the closing. The Designated Developer will be required to enter into a Development Agreement that provides the terms of any phasing of the Project and agreements to develop the Site in compliance with the proposed development plan.

Team Member Qualifications

Each entity submitting a Proposal must provide the following:

- Identification and qualifications of each member of the development team, including all persons or entities that will design, develop, or operate the Project, as well as the attorney, architect, engineer, general contractor and other professionals, as appropriate, including leasing and management, who will be involved with this Project.
- A description of similar projects undertaken by the members of the Respondent's team, particularly mixed-use, urban development projects (including a statement of the dollar value of such projects, the project manager's name and key partners, where applicable).
- A summary of the availability of each of the principal members of each firm and their availability for commitment to the Project.

- Documentation addressing whether any participating team members have been involved in litigation or legal dispute regarding a real estate venture during the past five years.
- Background information of the owner or tenant entity, including resumes describing the relevant experience of all principal members. This information must be submitted for every participant in a joint venture and should highlight similar projects (including a project description and approximate dollar value for each).

Respondent Description

Each entity submitting a Proposal must demonstrate sufficient financial resources and professional ability to develop the Site in a manner consistent with its Proposal. In addition, all Respondents must complete and submit the NYS Vendor Responsibility Questionnaire, which is described in Section 10 Procurement Forms and Requirements.

Each Proposal must include a description of the Respondent owner (under a sale) or tenant entity (under a long-term lease) or the development team, including:

- The intended form and structure of the owner or tenant entity and any proposed partnership or joint venture must be clearly explained. A chart/diagram of the owner or tenant entity, showing structure (percentages) of ownership and investment must be included.
- Name, address, phone number and email and of each member of the owner or tenant entity. Respondents must provide the Federal EIN numbers of the development entity and identify a primary contact person.
- Current operating budget and previous three (3) years of audited financials for all entities with an ownership percentage in the Proposal.
- A copy of the most recent credit report for key members of the owner or tenant entity.
- Documentation addressing whether the Respondent, or any participating member of the team, has been involved in any litigation or legal dispute regarding a real estate venture during the past five years.
- Evidence of ability to finance the Project including letters of interest and/or intent from equity sources and lenders.
- Evidence of Respondent's commitment to pay, from the date of its conditional designation as "Designated Developer," the security deposit.
- Evidence of Respondent's commitment to pay the full purchase price for the Site (including 10% at designation of and balance at closing, if a purchase transaction) or 10% of the net present value of the schedule of lease payments (at designation, if a lease transaction).
- Any additional documentation or information evidencing the strength of the Respondent and its ability to complete the Project in a timely manner.

Financial Plan

Respondents are required to include a completed "USA Niagara Development Proposal Template" workbook with their Proposal submission. The template can be downloaded using the following link:

[USA Niagara Development Template](#)

Respondents must fill in all shaded cells in the workbook to the best of their ability. Additional information can also be added in blank fields as needed. **Please note: there are two tabs in the workbook that must be completed— "Program & Financial Assumptions" and "Pro Forma."**

Completing the RFP Workbook requires Respondents to enter and submit information:

- *Proposed Program/Uses:* Gross square foot estimates of proposed uses including retail, office, hotel and residential. New uses can be entered in the blank fields. Numeric fields that do not apply should be filled in with zeros (0).
- *Key Financial Assumptions:* Assumptions related to the future operation of the project including rentable space, operating expenses, capital expenses, taxes and recoveries. Numeric fields that do not apply should be filled in with zeros (0).
- *Sources Funding:* Construction sources including equity and financing sources.
- *Uses of Funding:* Construction budget and uses of funds including all soft costs, hard costs and financing fees. Fields that do not apply should be filled in with zeros (0).
- *Annual Base Rent:* Estimated annual per square foot rent for a 10-year operation period post-construction including any anticipated escalation. Average base rent is applied to "Rentable/Revenue-Generating SF" in the Key Assumptions Box to populate the "total annual base rent" on the Pro Form tab. If none of the proposed space will be "rentable," fill this field in with zero (0), but make sure to add any revenue streams under income on the Pro Forma tab.
- *Pro Forma:* Cash flows for the development and Project operation, including details of any as-of-right or discretionary real estate tax, other tax, energy or other governmental benefits assumed in the model. This data should extend out to 10 years of operations and include all necessary capital investments and reserves over time. New income or expense types can be entered in the "other" fields and must include a brief description.

Required Forms and Certifications (attach as appendices)

All certifications, forms, affidavits, etc. required in section XI of this RFP (“Contractual Requirements”) must be completed by the lead consultant and attached as appendices to the proposal in the following order:

- Conflict of Interest Attestation
- State Finance Law Sections 139-j and 139-k Form
- Vendor Responsibility Questionnaire Form (completed form or VendRep System receipt)
- Iran Divestment Act Affirmation (on company letterhead)
- Executive Order 177 Certification
- Executive Order 16 Form
- OCSD-1 - MWBE and SDVOB Participation / EEO Policy Statement
- OCSD-2 - Staffing Plan (note: must also be completed by any subconsultants)
- OCSD-4 - MWBE and SDVOB Utilization Plan
- Diversity Practices Questionnaire
- Encouraging the Use of NYS Businesses Form
- ST-220-CA Form
- W9 Form
- NYS Licensing Certifications (if applicable)

VIII. SUBMISSION INSTRUCTIONS

Proposal Submission

A PDF copy of the proposal (with any appendices) must be uploaded to a dedicated Dropbox web link (that will be unique to each Respondent) prior to the deadline shown on the cover of this document. Respondents must request the dedicated Dropbox web link by sending an email to ParkviewRFP@esd.ny.gov by the deadline shown on the cover of this document. At the discretion of ESD, requests for deadline extensions may be considered prior to the deadline and, if granted, announced on the NYS Contract Reporter Website.

Additionally, please send six (6) hard copies of the proposal to the address shown below. Proposal packages must be firmly sealed in an envelope and contain the Respondent’s name and return address.

Send proposal hard copies to:

Rob Sozanski, Project Manager
USA Niagara Development Corporation
222 First Street, 7th Floor
Niagara Falls, NY 14303

Pre-Proposal Meeting

A non-mandatory pre-proposal meeting for prospective respondents will be held at **10am (EST) on April 11th, 2023** at the Niagara Falls Convention Center. To participate in the pre-proposal meeting, please RSVP to Rob Sozanski at ParkviewRFP@esd.ny.gov prior to **5pm (EST) on April 10th, 2023**. Respondents will be required to provide “sign-in sheet” information—company name, address/phone, and contact person email. ESD representatives will be present at the meeting to provide an overview of the RFP and any necessary clarification for completing required forms. A visit to the development site will follow immediately after the meeting.

RFP Inquiries

ESD will accept written questions via email from prospective Respondents no later than deadline shown on the cover of this document. Questions must be submitted via email to the address shown on the cover.

No contact related to this solicitation with ESD Board members, staff or consultants, other than emails to the designated email account for the solicitation will be allowed by Respondents or employed representatives of Respondent team members during the procurement period of this RFP. Any such contact by a Respondent will be grounds for disqualification.

IX. SELECTION CRITERIA

In reviewing and evaluating proposals, the Selection Committee will consider such criteria (all criteria considered being referred to collectively as the “Selection Criteria”) that, in USA Niagara’s absolute discretion, are in the best interests of USA Niagara and the City. The criteria listed below are of significant concern.

RFP Requirements (20 points)

Extent that the proposed Project meets the requirements outlined in Section VI.

Development Plan (20 points)

The overall proposed quality of the development plan, its proposed timetables, and extent that the plan will yield a successful project.

Respondent Team Qualifications (20 points)

Extent that the proposed Project Team demonstrates a proven track record in successfully completing similar projects.

Extent that the proposed Project Team, and/or individual members or member firms on the Team, meet the requirements of the NYS Comptroller’s Office and ESD policies on Responsible Vendors

Financial Plan (20 points)

The quality of the overall financial plan, including:

- The use of reasonable and attributable assumptions;
- The level of demonstrated financial capacity to realize the proposed Project, documented through sources such as, but limited to expressions of interest from lenders, letters of credit, and/or performance bonding capacity.

Public Benefit (10 points)

Extent that the proposed Project yields the highest level of public benefits (e.g., private taxable investment, new jobs/opportunities, highest return on the land, external benefits to the City’s setting [e.g., expansion of retail choices/offerings, extension of visitor stay, quality of life improvements], etc.) with the least amount of public investment.

Diversity Practices (10 points)

Respondents to the RFP will be evaluated for Diversity Practices using a Diversity Practices Questionnaire. Up to 10 points will be awarded based upon the contents of the Diversity Practices Questionnaire submitted by each respondent to the RFP.

X. GENERAL PROVISIONS

The issuance of this RFP and the submission of a response by a Respondent or the acceptance of such a response by USA Niagara does not obligate USA Niagara in any manner. USA Niagara reserves the right to:

- amend, modify or withdraw this RFP;
- revise any requirement of this RFP;
- require supplemental statements or information from any responsible party;
- accept or reject any or all responses hereto;
- extend the deadline for submission of responses hereto;
- negotiate potential contract terms with any Respondent;
- communicate with any Respondent to correct and/or clarify responses which do not conform to the instructions contained herein;
- cancel, or reissue in whole or in part, this RFP, if ESD determines in its sole discretion that it is its best interest to do so; and
- extend the term of any agreement on terms consistent with this RFP.

USA Niagara may exercise the foregoing rights at any time without notice and without liability to any responding firm or any other party for its expenses incurred in preparation of responses hereto or otherwise. All costs associated with responding to this RFP will be at the sole cost and expense of the Respondent.

All information submitted in response to this RFP is subject to the Freedom of Information Law (“FOIL”), which generally mandates the disclosure of documents in the possession of USA Niagara upon the request of any person unless the content of the document falls under a specific exemption to disclosure. In addition, Proposals may be discussed at meetings of the USA Niagara Directors, which meetings are subject to the Open Meetings Law.

USA Niagara reserves the right, in its sole discretion, to retain and use all the materials and information, and the ideas and suggestions therein, submitted in response to this solicitation (collectively, the “Response Information”) for any purpose. By submitting a Proposal, each Respondent waives any and all claims against USA Niagara relating to USA Niagara’s retention or use of the Response Information.

Submission Of Proposals

Only proposals that comply with all provisions, requirements, terms and conditions outlined in this RFP will be considered for review by USA Niagara unless such provision, requirement, terms or condition is waived by USA Niagara in its sole and absolute discretion.

USA Niagara reserves the right to independently investigate or request clarification of the contents of any proposal, including requiring any proposer to provide additional information or to make an oral presentation. All materials submitted in response to this RFP become USA Niagara's property without any obligation to return such materials. All determinations of completeness of any submission and its compliance with the provisions, requirements, terms and conditions of this RFP and the eligibility or qualification of any proposer shall be in the sole and absolute discretion of USA Niagara. USA Niagara may waive any of the provisions, requirements, terms and conditions of this RFP.

Subsequent to submission of proposals in response to this RFP, USA Niagara, in the exercise of their sole and absolute discretion, may enter into parallel negotiations with two or more proposers, may designate two or more proposers for "short list" consideration, may request best and final offers, and/or may conduct other additional competitive proceedings with respect to the potential disposition covered by this RFP.

Contingencies

All proposals must be submitted in accordance with the provisions, requirements, terms and conditions of this RFP. Proposals which are contingent or which are submitted in any other form will not be considered.

Brokers

Proposals shall be accepted from principals only. No brokerage fees, finder's fees, commissions or other compensation will be payable by the State, ESD, or USA Niagara in connection with the selection of a proposer or the disposition of the Site. Submission of a proposal by a proposer in response to this RFP constitutes an undertaking by the proposer to hold harmless and indemnify and defend the State, ESD and USA Niagara from and against any and all expenses, damages or liability (including, without limiting the foregoing, attorneys' fees and disbursements) arising out of any claim for such fees, commissions or other compensation made in connection with such proposer's response to this RFP, selection or (non-selection) thereunder, and/or execution (or non-execution) of a Pre-Development Agreement and Development Agreement.

Deposit, Pre-Development Agreement, and Development Agreement

Not more than 30 business days after notification of selection by USA Niagara, the Preferred Developer must deliver a deposit ("Deposit") of \$50,000 to USA Niagara. In the event that such proposer fails to deliver the Deposit within this specified period after notification of its selection, USA Niagara may de-designate that proposer. The Deposit shall be applied as liquidated damages for breach by the developer. The Deposit may be in the form of a cashier's check or an irrevocable standby letter of credit, satisfactory in all respects to USA Niagara and ESD in their sole discretion.

The Deposit shall, among other things, secure the selected developer's obligation for timely submission of all documents and information deemed necessary by USA Niagara in connection with documents such as development plans, construction documents and information related to State Environmental Quality Review Act (SEQRA) documentation, as well as proceeding with construction in a timely manner as set forth in the approved project completion schedule.

The submission of a proposal shall constitute an agreement by the submitting proposer to enter into both Pre-Development and Development Agreements. Except as provided below, in the event that the Preferred Developer with respect to the Site fails to promptly enter into the Pre-Development Agreement, USA Niagara may terminate the designation of the Preferred Developer.

Failure by USA Niagara for any reason to execute a Development Agreement with a developer will not create any liability on the part of USA Niagara, its shareholders, or any of its directors, officers, employees, agents, consultants or contractors, except that if USA Niagara shall fail to execute a Development Agreement with the developer where the developer has not breached any of the terms or conditions of this request and is not otherwise at fault, USA Niagara shall return the Deposit.

The submission of a proposal shall constitute agreement by the submitting proposer that the sole remedy for USA Niagara breach of this RFP, Pre-Development Agreement, or the Development Agreement is the return of the Deposit.

USA Niagara and the selected Preferred Developer will promptly enter into a concise Pre-Development Agreement that shall set out the principal terms and conditions that shall subsequently be entered into in the Development Agreement. During the period following designation of Preferred Developer's proposal and prior to execution of the Development Agreement, USA Niagara and the Preferred Developer agree to be governed by the Pre-Development Agreement by which the project development will proceed, including but not limited to the mandated schedule of milestones leading to the development agreement; completion of environmental review by USA Niagara as lead agency under SEQRA (with all design and supporting technical information the sole responsibility of the Preferred Developer); provision for insurance coverage and liabilities; approval of construction plans and timetables; budgets; and appropriate site safety and security arrangements.

The Development Agreement will be provided to the selected Preferred Developer following designation. It is anticipated that the Development Agreement will be executed after or concurrent with completion of the SEQRA environmental review process.

Upon receipt by USA Niagara evidence satisfactory in all respects of valid permanent certificates of occupancy for all improvements and structures provided for in the approved plans, and provided that no default or dispute is in existence, or deemed as imminent by USA Niagara with respect to the Development Agreement, USA Niagara will apply the Deposit; first to then outstanding developer obligations in accordance within the terms and conditions of the Development Agreement; and if any remaining, second to the developer.

Permits and Approvals

All environmental review procedures and approvals for development of the site will be in accordance with SEQRA and be subject to site plan review/approval by the Niagara Falls Planning Board. Construction on the site by the Preferred Developer will also be subject to requirements of the following codes, where applicable:

- Building Code of New York State;
- Energy Conservation Construction Code of New York State;
- Fire Code of New York State;
- Fuel Gas Code of New York State;
- Mechanical Code of New York State;
- Plumbing Code of New York State;
- Property Maintenance Code of New York State; and
- Residential Code of New York State.

The Project must comply with the federal Americans with Disabilities Act (ADA) and implementing regulations and standards.

The selected Preferred Developer is required, at its own expense, to: (1) obtain from all appropriate government authorities all construction and ancillary approvals for the development of the Site including, but not limited to, all site plan approvals, technical design/documentation for SEQRA, and building permits and approvals; and (2) comply with all applicable federal, state, and local laws and regulations.

The Preferred Developer shall have no rights to the use or occupation of any private property or City of Niagara Falls sites and/or right-of-ways or other property adjacent to the Site for purposes of staging, storage, construction, access, scaffolding or any other purpose without first obtaining a Permit and/or approval from the City. The Permit shall contain provisions deemed material and necessary to safeguard the property and may include specific provisions for appropriate insurance and indemnification satisfactory to USA Niagara in all respects.

Taxes And Incentives

No proposal shall be conditioned upon the receipt of tax abatements and/or any other economic incentives, although financial plans in proposals may identify funding “gaps” related to realization of the proposed development and potential options to addressing such gaps that may be considered by USA Niagara, upon which in their sole discretion; USA Niagara may act or identify other equivalent measures to address such gaps.

Not An Offer

This RFP does not constitute a solicitation or an offer for the Site or any portions thereof, nor a solicitation or offer to the Site or any portions thereof. Neither USA Niagara any of the State’s agencies, departments, offices, public authorities or other entities, nor any affiliate or subsidiary of any of the foregoing, shall incur any obligation or liability on account of this RFP or any submission made in connection with this RFP or any other reason unless and until a Development Agreement setting forth all the terms and conditions of the transaction have been fully executed and unconditionally delivered by all the parties thereto and all necessary consents and approvals for USA Niagara entry into such agreements have been obtained including, without limiting the foregoing, approval by USA Niagara.

No proposal for the Site shall be deemed accepted until closing on the Development Agreement has occurred.

USA Niagara reserves the right, in its sole discretion, not to select or accept one or more proposals submitted in connection with this RFP, including, without limiting the foregoing, the highest-ranked proposal for the Site. USA Niagara has no obligation, under this RFP or otherwise, to dispose of the Site, or any portion of the Site, through a competitive proposal process, including, without limiting the foregoing, to dispose of the Site to the highest proposer or proposers. USA Niagara may at any time withdraw the Site, or any portion of the Site, included in this RFP. USA Niagara has the right in their sole and absolute discretion to reject any and all proposals, to accept any proposal, and to elect not to proceed with the process set forth in this RFP. USA Niagara may, at any time, dispose of the Site, or any portion of the Site, in any appropriate manner.

USA Niagara has no obligation to discuss its reasons for selecting, accepting or rejecting any proposals with any proposer.

Expenses

USA Niagara and ESD shall not be liable for any costs or expenses (including, without limiting the foregoing costs and expenses of legal counsel) incurred by any proposer in responding to this RFP, in connection with the Site or under any other circumstances, including, without limiting the foregoing, whether or not a particular proposal was accepted, rejected or otherwise designated or selected or if USA Niagara select not to proceed with the disposition process. All costs and expenses incurred by each proposer in connection with this RFP or the Site will be borne by the proposer, including, without limiting the foregoing, all costs and expenses in connection with: surveys, reports, studies, research and other due diligence work; preparation of each proposal; advice and representation of legal counsel; responding to this RFP, the Pre-Development Agreement, and the Development Agreement.

Developer Due Diligence

Respondents should assume that the Property will be disposed of “AS IS” and “WHERE IS” without representation, warranty, or guaranty as to quantity, quality, title, character, condition, size, or kind, or that the same is in condition or fit to be used for the Respondent’s purpose.

ESD will post information regarding the RFP on the New York State Contract Reporter website (www.nyscr.ny.gov). Respondents are encouraged to check back for updates. ESD makes no representation or warranty concerning the accuracy or utility of information posted or otherwise provided to the potential Respondents or to the Respondents.

Respondents must rely solely on their own independent research and investigations for all matters, including costs, title, survey, development, financing, construction, and remediation, and shall not rely on the information provided in connection with this RFP.

Upon selection of a preferred respondent, ESD reserves the right to enact a holding fee of \$500 per month during the due diligence and construction periods, fully refundable upon completion of the project. If the respondent is unable to complete the project, ESD will retain the fee as compensation for incurring expenses during this period.

XI. CONTRACTUAL REQUIREMENTS

This section contains additional information about the forms that are required to be included in each Respondent's submission as well as information about ESD's procurement requirements.

I. Conflicts of Interest

Respondents must attest they have read, understood and will comply with the following provisions <https://esd.ny.gov/sites/default/files/Conflict-of-Interest-Attestation-June-2019.pdf>. ESD shall have the right to disqualify any respondent to this RFP or terminate any contract entered into as a result of this RFP should ESD determine that the Respondent has violated any of these requirements.

- a. Gifts and Offers of Employment: Respondent has not and shall not during this procurement and during the negotiation of any contract resulting from this procurement, offer to any employee, member or director of ESD, any gift, whether in the form of money, services, loan, travel, entertainment, hospitality, thing or promise, or in any other form, under circumstances in which it could reasonably be inferred that the offer was intended to influence said employee, member or director, or could reasonably be expected to influence said employee, member or director, in the performance of the official duty of said employee, member or director or was intended as a reward for any official action on the part of said employee, member or director. Respondent may not make any offers of employment or discuss the possibility of such offers with any employee, member or director of ESD who is involved in this procurement and/or resulting contract negotiation within at least 30 days from the time that the employee's involvement in this matter closed.
- b. Disclosure of Potential Conflicts: Respondent shall disclose any existing or contemplated relationship with any other person or entity, including relationships with any member, shareholders of 5% or more, parent, subsidiary, or affiliated firm, which would constitute an actual or potential conflict of interest or appearance of impropriety, relating to other clients/customers/employers of the Respondent or former officers and employees of ESD, in connection with your rendering services enumerated in this RFP. If a conflict does or might exist, Respondent must describe how it would eliminate or prevent it.

- c. Disclosure of Ethics Investigations: Respondent must disclose whether it, or any of its members, shareholders of 5% or more, parents, affiliates, or subsidiaries, have been the subject of any ongoing investigation or disciplinary action by the New York State Commission on Public Integrity or its predecessor State entities (collectively, "Commission"), and if so, a description must be included indicating how any matter before the Commission was resolved or whether it remains unresolved.

2. State Finance Law Sections 139-j and 139-k forms

State Finance Law Sections 139-j and 139-k (collectively, the "Procurement Requirements") apply to this RFP. These Procurement Requirements: (1) govern permissible communications between potential Respondents and ESD or other involved governmental entities with respect to this RFP; (2) provide for increased disclosure in the public procurement process through identification of persons or organizations whose function is to influence procurement contracts, public works agreements and real property transactions; and (3) establish sanctions for knowing and willful violations of the provisions of the Procurement Requirements, including disqualification from eligibility for an award of any contract pursuant to this RFP. Compliance with the Procurement Requirements requires that all communications regarding this RFP, from the time of its issuance through final award and execution of any resulting contract (the "Restricted Period"), be conducted only with the designated contact persons listed below; the completion by Respondents of the Offeror Disclosure of Prior Non-Responsibility Determinations, and the Offeror's Affirmation of Understanding and Agreement pursuant to State Finance Law (each form is accessible at the Required Forms for Vendors link at the ESD web site under "RFPs/RFQs"); and periodic updating of such forms during the term of any contract resulting from this RFP.

Respondents must submit the Offeror Disclosure of Prior Non-Responsibility Determinations, and the Offeror's Affirmation of Understanding and Agreement pursuant to State Finance Law as part of their submittal. Copies of these forms are available at:

https://cdn.esd.ny.gov/CorporateInformation/Data/RFPs/RequiredForms/SF_Law139_JK.pdf

The Procurement Requirements also require ESD staff to obtain and report certain information when contacted by Respondents during the Restricted Period, make a determination of the responsibility of Respondents and make all such information publicly available in accordance with applicable law. If a Respondent is found to have knowingly

and willfully violated the State Finance Law provisions, that Respondent and its subsidiaries, related or successor entities will be determined to be a non-responsible Respondent and will not be awarded any contract issued pursuant to this solicitation. In addition, two such findings of non-responsibility within a four-year period can result in debarment from obtaining any New York State governmental procurement contract. The designated contact account for this solicitation is referenced on the cover of this RFP.

This is not a complete presentation of the provisions of the Procurement Requirements. A copy of State Finance Law Sections 139-j and 139-k can be found at:

https://cdn.esd.ny.gov/corporateinformation/Data/RFPs/RequiredForms/PermissibleContactsPolicy_Jan2007.PDF

All potential Respondents are solely responsible for full compliance with the Procurement Requirements. Both the prime consultant and any sub-consultants complete the forms required above.

3. Vendor Responsibility Questionnaire

All Respondents to this RFP must be “responsible,” which in this context means that they must have the requisite financial ability, organizational capacity and legal authority to carry out its obligations under this RFP, and in addition must demonstrate that both the Respondent and its principals have and will maintain the level of integrity needed to contract with New York State entities such as ESD and its subsidiaries. Further, the Respondent must show satisfactory performance of all prior government contracts. Accordingly, the contract to be entered into between ESD and the Respondent, if any, shall include clauses providing that the Respondent remain “responsible” throughout the term of the contract, that ESD may suspend the contract if information is discovered that calls into question the responsibility of the contracting party, and that ESD may terminate the contract based on a determination that the contracting party is non-responsible. On request, model language to this effect will be provided to any Respondent to this RFP.

To assist in the determination of responsibility ESD requires that all Respondents register in the State's Vendor Responsibility System (“Vend-Rep System”). The Vend-Rep System allows business entities to enter and maintain their Vendor Responsibility Questionnaire information in a secure, centralized database. New York State Procurement Law requires that state agencies award contracts only to responsible vendors. Respondents are to file the required Vendor Responsibility Questionnaire online via the Vend-Rep System or may choose to complete and submit a paper questionnaire. Please include a copy of your Vend-Rep submission receipt or paper questionnaire with your proposal.

To enroll in and use the Vend-Rep System, see the System Instructions available at www.osc.state.ny.us/vendrep or go directly to the Vend-Rep system online at <https://portal.osc.state.ny.us>. For direct Vend-Rep System user assistance, the

Office of the State Comptroller’s Help Desk may be reached at 866-370-4672 or 518-408-4672 or by email at helpdesk@osc.state.ny.us.

Respondents opting to file a paper questionnaire can obtain the appropriate questionnaire from the Vend-Rep website (www.osc.state.ny.us/vendrep/forms_vendor.htm) and execute accordingly pertaining to the company’s trade industry. Per the website, Respondents are to “Select the questionnaire which best matches the business type (either For-Profit or Not-For-Profit) and business activity (Construction or Other).”

4. Iran Divestment Act

Every Proposal made to ESD or its subsidiaries pursuant to a competitive solicitation must contain the following statement, signed by the Respondent on company letterhead and affirmed as true under penalty of perjury:

"By submission of this bid, each respondent and each person signing on behalf of any respondent certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief that each respondent is not on the list created pursuant to paragraph (b) of subdivision 3 of section 165-a of the State Finance Law."

The list in question is maintained by the Office of General Services. For further information and to view this list please go to: <https://ogs.ny.gov/iran-divestment-act-2012>

5. Executive Order 177

In accordance with New York State Executive Order 177, all Respondents must certify that they are in compliance with the New York State Human Rights Law which prohibits discrimination and harassment based on a protected class, and which requires reasonable accommodation for persons with disability or pregnancy related conditions.

The required certification for can be found at: <https://esd.ny.gov/sites/default/files/EO-177-Certification.pdf> and must be signed and included in all Proposals.

6. Executive Order 16

In accordance with New York State Executive Order 16 (“EO-16”), all bidders must certify that they are in compliance with EO-16 prohibiting State Agencies and Authorities from Contracting with Businesses in Russia. EO-16 will remain in effect while sanctions imposed by the federal government are in effect.

“By submission of a bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief that each bidder is in compliance with EO-16.”

The required certification for can be found at: <https://esd.ny.gov/sites/default/files/EO-16-Certification.pdf> and must be signed and included in all Proposals.

7. Non-Discrimination and Contractor & Supplier Diversity Requirements

CONTRACTOR REQUIREMENTS AND PROCEDURES FOR PARTICIPATION BY NEW YORK STATE-CERTIFIED MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES AND EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITY GROUP MEMBERS AND WOMEN

Pursuant to New York State Executive Law Article 15-A and Parts 140-145 of Title 5 of the New York Codes, Rules and Regulations ESD and its subsidiaries are required to promote opportunities for the maximum feasible participation of New York State-certified Minority and Women-owned Business Enterprises (“MWBEs”) and the employment of minority group members and women in the performance of ESD contracts.

7.1 Business Participation Opportunities for MWBEs

For purposes of this solicitation, ESD hereby establishes an **overall combined goal of 30 percent for MWBE participation** (based on the current availability of MBEs and WBEs). A contractor (“Contractor”) on any contract resulting from this procurement (“Contract”) must document its good faith efforts to provide meaningful participation by MWBEs as subcontractors and suppliers in the performance of the Contract. To that end, by submitting a response to this RFP, the respondent agrees that ESD may withhold payment pursuant to any Contract awarded as a result of this RFP pending receipt of the required MWBE documentation.

The directory of MWBEs can be viewed at: <https://ny.newnycontracts.com>. For guidance on how ESD will evaluate a Contractor’s “good faith efforts,” refer to 5 NYCRR § 142.8.

The respondent understands that only sums paid to MWBEs for the performance of a commercially useful function, as that term is defined in 5 NYCRR § 140.1, may be applied towards the achievement of the applicable MWBE participation goal. The portion of a contract with an MWBE serving as a supplier that shall be deemed to represent the commercially useful function performed by the MWBE shall be 60 percent of the total value of the contract. The portion of a contract with an MWBE serving as a broker that shall be deemed to represent the commercially useful function performed by the MWBE shall be the monetary value for fees, or the markup percentage, charged by the MWBE.

In accordance with 5 NYCRR § 142.13, the respondent further acknowledges that if it is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in a Contract resulting from this RFP, such finding constitutes a breach of contract and ESD may withhold payment as liquidated damages.

Such liquidated damages shall be calculated as an amount equaling the difference between: (1) all sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and (2) all sums actually paid to

MWBEs for work performed or materials supplied under the Contract.

By submitting a bid or proposal, a respondent agrees to demonstrate its good faith efforts to achieve the applicable MWBE participation goals by submitting evidence thereof through the New York State Contract System (“NYSCS”), which can be viewed at <https://ny.newnycontracts.com>, provided, however, that a respondent may arrange to provide such evidence via a non-electronic method by contacting the Office of Contractor and Supplier Diversity (“OCSD”) at OCSD@esd.ny.gov.

Additionally, a respondent will be required to submit the following documents and information as evidence of compliance with the foregoing:

An MWBE Utilization Plan with their bid or proposal. Any modifications or changes to an accepted MWBE Utilization Plan after the Contract award and during the term of the Contract must be reported on a revised MWBE Utilization Plan and submitted to ESD for review and approval. ESD will review the submitted MWBE Utilization Plan and advise the respondent of ESD acceptance or issue a notice of deficiency within 30 days of receipt.

If a notice of deficiency is issued, the respondent will be required to respond to the notice of deficiency within seven (7) business days of receipt by submitting to OCSD at OCSD@esd.ny.gov, a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by ESD to be inadequate, ESD shall notify the respondent and direct the respondent to submit, within five (5) business days, a request for a partial or total waiver of MWBE participation goals. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.

ESD may disqualify a respondent as being non-responsive under the following circumstances:

- If a respondent fails to submit an MWBE Utilization Plan;
- If a respondent fails to submit a written remedy to a notice of deficiency;
- If a respondent fails to submit a request for waiver; or
- If ESD determines that the respondent has failed to document good faith efforts.

The successful respondent will be required to attempt to utilize, in good faith, any MBE or WBE identified within its MWBE Utilization Plan, during the performance of the Contract. Requests for a partial or total waiver of established goal requirements made subsequent to Contract Award may be made at any time during the term of the Contract to ESD, but must be made no later than prior to the submission of a request for final payment on the Contract.

The successful respondent will be required to submit a quarterly MWBE Contractor Compliance & Payment Report to ESD, by the 10th day following each end of quarter over the term of the Contract documenting the progress made toward achievement of the MWBE goals of the Contract.

7.2 Equal Employment Opportunity Requirements

By submission of a bid or proposal in response to this solicitation, the respondent agrees with all of the terms and conditions [SCHEDULE B - PARTICIPATION BY MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES: REQUIREMENTS AND PROCEDURES](#). The respondent is required to ensure that it and any subcontractors awarded a subcontract for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work"), except where the Work is for the beneficial use of the respondent, undertake or continue programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, equal opportunity shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, termination, and rates of pay or other forms of compensation. This requirement does not apply to: (i) work, goods, or services unrelated to the Contract; or (ii) employment outside New York State.

The respondent will be required to submit a Minority and Women-owned Business Enterprise and Equal Employment Opportunity Policy Statement, OCSD-1, to ESD with its bid or proposal.

If awarded a Contract, respondent shall submit a Workforce Utilization Report and shall require each of its Subcontractors to submit a Workforce Utilization Report, in such format as shall be required by ESD on a MONTHLY basis during the term of the Contract.

Pursuant to Executive Order #162, contractors and subcontractors will also be required to report the gross wages paid to each of their employees for the work performed by such employees on the contract utilizing the Workforce Utilization Report on a quarterly basis.

Further, pursuant to Article 15 of the Executive Law (the "Human Rights Law"), all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor and sub-contractors will not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

Please Note: Failure to comply with the foregoing requirements may result in a finding of non-responsiveness, non-responsibility and/or a breach of the Contract, leading to the withholding of funds, suspension or termination of the Contract or such other actions or enforcement proceedings as allowed by the Contract.

The required forms can be found at the following web addresses:

Form OCSD-1: <https://esd.ny.gov/sites/default/files/OCSD-1-Policy-Statement.pdf>

Form OCSD-2: <https://esd.ny.gov/sites/default/files/OCSD-2-Staffing-Plan.pdf>

Form OCSD-3: <https://esd.ny.gov/sites/default/files/OCSD-3-Workforce-Utilization-Report.xlsx>

Form OCSD-4: <https://esd.ny.gov/sites/default/files/OCSD-4-Utilization-Plan.pdf>

Form OCSD-5: <https://esd.ny.gov/sites/default/files/OCSD-5-Waiver-Request-Form.pdf>

Form OCSD-6: <https://esd.ny.gov/sites/default/files/OCSD-6-Compliance-Report.pdf>

Form OCSD-7: <https://esd.ny.gov/sites/default/files/OCSD-7-MWBE-Expedite-Request-Form.pdf>

In the event that the above links are unavailable or inactive, the forms may also be requested from OCSD at OCSD@esd.ny.gov

7.3 Diversity Practices

ESD has determined, pursuant to New York State Executive Law Article 15-A, that the assessment of the diversity practices of Respondents is practical, feasible, and appropriate. Accordingly, Respondents shall be required to include as part of their response to this procurement the Diversity Practices Questionnaire: <https://cdn.esd.ny.gov/corporateinformation/Data/RFPs/JavitsConstructionManagement/Addendum%202.pdf>.

7.4 Participation Opportunities For New York State Certified Service-Disabled Veteran Owned Businesses

Article 17-B of the New York State Executive Law provides for more meaningful participation in public procurement by certified Service-Disabled Veteran-Owned Businesses ("SDVOB"), thereby further integrating such businesses into New York State's economy. ESD recognizes the need to promote the employment of service-disabled veterans and to ensure that certified service-disabled veteran-owned businesses have opportunities for maximum feasible participation in the performance of ESD contracts.

In recognition of the service and sacrifices made by service-disabled veterans and in recognition of their economic activity in doing business in New York State, Respondents are expected to consider SDVOBs in the fulfillment of the requirements of the Contract. Such participation may be as subcontractors or suppliers, as protégés, or in other partnering or supporting roles.

7.4.1 Contract Goals

ESD hereby establishes an **overall goal of 6% for SDVOB participation**, based on the current availability of qualified SDVOBs. For purposes of providing meaningful participation by SDVOBs, the Respondent/Contractor should reference the directory of New York State Certified SDVOBs found at: <https://online.ogs.ny.gov/SDVOB/search>

Questions regarding compliance with SDVOB participation goals should be directed to the Designated Contacts. Additionally, following Contract execution, Contractor is encouraged to contact the Office of General Services' Division of Service-Disabled Veterans' Business Development at 518-474-2015 or VeteransDevelopment@ogs.ny.gov to discuss additional methods of maximizing participation by SDVOBs on the Contract.

Contractor must document "good faith efforts" to provide meaningful participation by SDVOBs as subcontractors or suppliers in the performance of the Contract.

7.4.2 SDVOB Utilization Plan

In accordance with 9 NYCRR § 252.2(i), Respondents are required to submit a completed SDVOB Utilization Plan on Form OCSD-4 with their bid.

The Utilization Plan shall list the SDVOBs that the Respondent intends to use to perform the Contract, a description of the work that the Respondent intends the SDVOB to perform to meet the goals on the Contract, the estimated dollar amounts to be paid to an SDVOB, or, if not known, an estimate of the percentage of Contract work the SDVOB will perform. By signing the Utilization Plan, the Respondent acknowledges that making false representations or providing information that shows a lack of good faith as part of, or in conjunction with, the submission of a Utilization Plan is prohibited by law and may result in penalties including, but not limited to, termination of a contract for cause, loss of eligibility to submit future bids, and/or withholding of payments. Any modifications or changes to the agreed participation by SDVOBs after the Contract award and during the term of the Contract must be reported on a revised SDVOB Utilization Plan and submitted to ESD.

ESD will review the submitted SDVOB Utilization Plan and advise the Respondent/Contractor of ESD acceptance or issue a notice of deficiency within 20 days of receipt.

If a notice of deficiency is issued, Respondent/Contractor agrees that it shall respond to the notice of deficiency, within seven business days of receipt, by submitting to ESD a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by ESD to be inadequate, ESD shall notify the Respondent/Contractor and direct the Respondent/Contractor to submit, within five business days of notification by ESD, a request for a partial or total waiver of SDVOB participation goals on OCSD-5. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.

ESD may disqualify a Respondent's bid or proposal as being non-responsive under the following circumstances:

- If a Respondent fails to submit an SDVOB Utilization Plan;
- If a Respondent fails to submit a written remedy to a notice of deficiency;
- If a Respondent fails to submit a request for waiver; or
- If ESD determines that the Respondent has failed to document good faith efforts.

If awarded a Contract, Contractor certifies that it will follow the submitted SDVOB Utilization Plan for the performance of SDVOBs on the Contract pursuant to the prescribed SDVOB contract goals set forth above.

Contractor further agrees that a failure to use SDVOBs as agreed in the Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, ESD shall be entitled to any remedy provided herein, including but not limited to, a finding of Contractor non-responsibility.

7.4.3 Request for Waiver

Prior to submission of a request for a partial or total waiver, Respondent/Contractor shall speak to the Designated Contacts at ESD for guidance.

In accordance with 9 NYCRR § 252.2(m), a Respondent/Contractor that is able to document good faith efforts to meet the goal requirements, as set forth in clause IV below, may submit a request for a partial or total waiver on Form SDVOB 200, accompanied by supporting documentation. A Respondent may submit the request for waiver at the same time it submits its SDVOB Utilization Plan. If a request for waiver is submitted with the SDVOB Utilization Plan and is not accepted by ESD at that time, the provisions of clauses II (C), (D) & (E) will apply. If the documentation included with the Respondent's/Contractor's waiver request is complete, ESD shall evaluate the request and issue a written notice of acceptance or denial within 20 days of receipt.

Contractor shall attempt to utilize, in good faith, the SDVOBs identified within its SDVOB Utilization Plan, during the performance of the Contract. Requests for a partial or total waiver of established goal requirements made subsequent to Contract award may be made at any time during the term of the Contract to ESD, but must be made no later than prior to the submission of a request for final payment on the Contract.

If ESD, upon review of the SDVOB Utilization Plan and Monthly SDVOB Compliance Report (OCSD-6) determines that Contractor is failing or refusing to comply with the contract goals and no waiver has been issued in regards to such non-compliance, ESD may issue a notice of deficiency to the Contractor. The Contractor must respond to the notice of deficiency within seven business days of receipt. Such response may include a request for partial or total waiver of SDVOB contract goals.

Waiver requests should be sent to ESD.

7.4.4 Required Good Faith Efforts

In accordance with 9 NYCRR § 252.2(n), Contractors must document their good faith efforts toward utilizing SDVOBs on the Contract. Evidence of required good faith efforts shall include, but not be limited to, the following:

- Copies of solicitations to SDVOBs and any responses thereto.
- Explanation of the specific reasons each SDVOB that responded to Respondents/Contractors' solicitation was not selected.
- Dates of any pre-bid, pre-award or other meetings attended by Contractor, if any, scheduled by ESD with certified SDVOBs whom ESD determined were capable of fulfilling the SDVOB goals set in the Contract.
- Information describing the specific steps undertaken to reasonably structure the Contract scope of work for the purpose of subcontracting with, or obtaining supplies from, certified SDVOBs.
- Other information deemed relevant to the waiver request.

7.4.5 Monthly SDVOB Contractor Compliance Report

In accordance with 9 NYCRR § 252.2(q), Contractor is required to report Monthly SDVOB Contractor Compliance to ESD during the term of the Contract for the preceding month's activity, documenting progress made towards achieving the Contract SDVOB goals. This information must be submitted using form OCSD-6 available on the ESD website and should be completed by the Contractor and submitted to ESD, by the 10th day of each month during the term of the Contract, for the preceding month's activity to: OCSD@esd.ny.gov.

6.4.6 Breach of Contract and Damages

In accordance with 9 NYCRR § 252.2(s), any Contractor found to have willfully and intentionally failed to comply with the SDVOB participation goals set forth in the Contract, shall be found to have breached the contract and Contractor shall pay damages as set forth therein.

8. Encouraging the Use of NYS Businesses in Contract Performance Form

New York State businesses have a substantial presence in State contracts and strongly contribute to the economies of the state and the nation. In recognition of their economic activity and leadership in doing business in New York State, Respondents for this ESD contract for commodities, services or technology are strongly encouraged and expected to consider New York State businesses in the fulfillment of the requirements of the contract. In order for ESD to assess the use of New York State businesses in each Proposal, ESD requests that each Respondent complete the Encouraging Use of New York State Businesses in Contract Performance form, accessible here:

<https://cdn.esd.ny.gov/CorporateInformation/Data/ENCOURAGINGUSEOFNEWYORKSTATEBUSINESSESINCONTRACTPERFORMANCE.pdf>

9. Certification under State Tax Law Section 5-a

Any contract resulting from this solicitation is also subject to the requirements of State Tax Law Section 5-a ("STL 5-a"). STL 5-a prohibits ESD from approving any such contract with any entity if that entity or any of its affiliates, subcontractors or affiliates of any subcontractor makes sales within New York State of tangible personal property or taxable services having a value over \$300,000 and is not registered for sales and compensating use tax purposes. To comply with STL 5-a, all Respondents to this solicitation must include in their Proposals a properly completed Form ST-220-CA (<https://esd.ny.gov/sites/default/files/ST220CA.pdf>) that the Respondent is not required to be registered with the State Department of Taxation and Finance. Also in accordance with the requirements of STL 5-a, any contract resulting from this solicitation will require periodic updating of the certifications contained in Form ST-220-CA. Solicitation responses that do not include a properly completed ST-220-CA will be considered incomplete and non-responsive and will not be considered for contract award. Only the prime consultant completes Form ST-220-CA, but Schedule A to Form ST-220-TD requires detailed information from the sub-consultants, such as tax ID number, etc., if applicable. Moreover, if applicable, certificates of authority must be attached by the prime consultant and all the sub-consultants.

10. Project Sunlight

This procurement is subject to the Public Integrity Reform Act of 2011. Under the Public Integrity Reform Act of 2011, “appearances” (broadly defined and including any substantive interaction that is meant to have an impact on the decision-making process of a state entity) before a public benefit corporation such as ESD by a person (also broadly defined) for the purposes of procuring a state contract (as contemplated in this RFP) must be reported by ESD to a database maintained by the State Office of General Services that is available to members of the public. If in doubt as to the applicability of Project Sunlight, Respondents and their advisors should consult the Laws of 2011, Ch. 399 for guidance.

11. Insurance Requirements

The contractor will be required to provide appropriate insurance coverage as determined by Empire State Development once the structure of the transaction with the contractor has been finalized

Empire State Development must be named as an additional insured on a primary and non-contributory basis on certain policies. All policies should include a waiver of subrogation in favor of Empire State Development .

12. W-9 Form

Provide a completed W-9 form (<https://www.irs.gov/pub/irs-pdf/fw9.pdf>), submit with proposal.

13. NYS Licensing Requirements (if applicable)

Respondents (and any proposed sub-consultants) required to certify documents must present evidence that they are licensed, as applicable, to practice engineering, architecture, landscape architecture, land surveying in the State of New York.